

**EXHIBIT A**

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.			FORM APPROVED OMB NO. 1105-0006								
<p>1. Submit To Appropriate Federal Agency:</p> <p>Office of Regional Counsel (02) U.S. Department of Veterans Affairs 200 Springs Road, Building 61 Bedford, Massachusetts 01730</p>		<p>2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) Number, street, city, State and Zip Code</p> <table> <tr> <td>Ronald R. Shannon</td> <td>Michael Perry</td> </tr> <tr> <td>8 Sanderson Drive</td> <td>Hanify and King</td> </tr> <tr> <td>Plymouth, MA 02360</td> <td>1 Beacon St.</td> </tr> <tr> <td></td> <td>Boston, MA 02108</td> </tr> </table>			Ronald R. Shannon	Michael Perry	8 Sanderson Drive	Hanify and King	Plymouth, MA 02360	1 Beacon St.		Boston, MA 02108	
Ronald R. Shannon	Michael Perry												
8 Sanderson Drive	Hanify and King												
Plymouth, MA 02360	1 Beacon St.												
	Boston, MA 02108												
3. TYPE OF EMPLOYMENT	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. or P.M.)									
<input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	04-27-36	M	12-07-01	8:00	a.m.								
8. Description of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary.)													
<p>At the Jamaica Plain, Massachusetts, VA at 8:00 a.m. on December 7, 2001, during Dr. Zhang's first attempt to perform a sigmoidoscopy on me, the scope hurt so bad that I screamed out loud, "It hurts!" He replied, "I'm sorry." He then put the scope in a second time, and after several minutes he yelled out, "I go too high! I go too high!" His nurse ran out of the room to get Dr. Pedrosa, who came into the room and yelled out, "Stop! Stop!" With the scope still inside of me, Dr. Pedrosa said to me and to Dr. Zhang that he was taking over, explained to Dr. Zhang that the lens had feces on it and</p>													
See attached continuation.													
9. PROPERTY DAMAGE													
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)													
N/A													
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)													
N/A													
10. PERSONAL INJURY/WRONGFUL DEATH													
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM, IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEASED.													
See attached continuation.													
11. WITNESSES													
NAME		ADDRESS (Number, street, city, State, and Zip Code)											
Patricia Shannon		8 Sanderson Drive, Plymouth, MA 02360											
12. (See instructions on reverse)													
12a. PROPERTY DAMAGE		12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.)									
N/A		\$500,000.00	—	\$500,000.00									
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.													
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)			13b. Phone number of signatory	14. DATE OF CLAIM									
<i>Ronald R. Shannon</i>			508-833-9359	12/04/03									
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS										
The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. (See 37 U.S.C. 3729.)			Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)										

85-100  
Previous editions are obsolete.  
Designed using FormGen Pro, WHG/DOJ, Jun 04

ASN 7540-00-634-4046

STANDARD FORM 65 (Rev. 7-82) (G)  
PREScribed BY DEPT. OF JUSTICE  
26 CFR 14.2

RS0249

RONALD R. SHAMON  
CLAIM FOR DAMAGE CONTINUATION PAGES

Item 8 continued.

had to be removed to be cleaned before proceeding. Dr. Pedrosa cleaned the lens and reinserted the scope. While removing the scope, he explained to Dr. Zhang the procedure for removing feces from the sides of the colon by using the scope. As a result of this procedure there was a perforation of my intestine.

Within days of my sigmoidoscopy, because of pain from my anus, I was examined on 12/11/01 at Brockton VA by Dr. Tamler, who, despite my claim of pain, said that I have a rash on my anus. On 12/12/01 pain was more intense with high temperature. I was examined by Dr. Dickenson at Brockton VA, who ordered a blood workup and an ultrasound. They indicated two abscesses formed in my anus and an elevated white blood count. A catheter was inserted and I was transported to West Roxbury VA.

On 12/12/01 at West Roxbury VA I was operated on by Dr. Fitzpatrick and Dr. Moore. Dr. Fitzpatrick told me that my intestines were perforated, causing an infection for the past five to six days. He also stated that there is a third abscess up higher feeding down into the other two.

On 12/15/01 Dr. Fitzpatrick and Dr. Duke operated to expand the incisions. I was released on 12/21/01 with a catheter and on antibiotics and two shifts of visiting nurses to dress my wounds.

12/31/01. Post-operative visit to Dr. Benoit at Jamaica Plain VA. Taken off some medication. Prescribed, Tamsulosin. On 1/5/02 fainted in shower, struck head and was rushed to Jordan Hospital, Plymouth, Mass., for overnight observation. Visiting nurse called Dr. Burch at Brockton Hospital. Dr. Burch said, "They should not have put you on Tamsulosin. It lowers your blood pressure."

1/11/02. Visiting nurse noticed an infection on my wounds. Sent to Brockton VA, Dr. Aslanian, who noticed an infection on left side of wound, cleaned wound, and ordered antibiotics for me.

1/15/02. Dr. Duke at West Roxbury VA made an incision and packed the wound. On 1/29/02 Dr. Fitzpatrick examined me, said the wounds were healed, and took me off antibiotics.

2/5/02. I noticed a yellow discharge from my anus and contacted Dr. Fitzpatrick, who said to see him on February 12. On 2/12/02 Dr. Fitzpatrick was not in. I was examined by his assistant, Dr. Navarro, who noticed a pus pocket on the edge of my sphincter and yellow discharge. He squeezed out the pus. He asked for consult from a senior staff member, Dr. Gordon, who examined my anus. I asked both Doctors Navarro and Gordon if a pus pocket and yellow discharge weren't indicative of an infection, if I should be on antibiotics, and if I would need more surgery. Dr. Gordon stated, "No more operations or antibiotics are necessary." He then prescribed one to two weeks of daily fleet enemas, saying that would take care of my problem. I

JUN-02-2005 11:29AM FROM HANIFY&amp;KING

## R. R. Shamon claim Item 8 continued

met Dr. Fitzpatrick in the lobby, where I brought him up to date with my meeting with Dr. Navarro and Dr. Gordon and about the fleet enemas.

On 2/15/02 I was still in pain with yellow discharge and blood/pus from my anus. I called Dr. Fitzpatrick, who said to see him on February 19. On February 19 Dr. Fitzpatrick said, "Why did Dr. Gordon order fleet enemas? You're not an old woman." He didn't know why my sphincter muscle wasn't closing and said to exercise the sphincter muscle.

On February 24, 2002, I called Dr. Fitzpatrick and told him that I wanted a second opinion. He asked me to work with him a few more weeks and the problem would abate. I insisted on the second opinion. He gave me the name of Dr. Cima, whom I first saw on February 27. He kept me overnight and operated on me on February 28.

Dr. Cima found three abscesses up higher on my colon, inserted a Seton drain, inserted 18" Mallinckrodt tube, found a 3 cm ulcer on the post rectal wall adjacent to the sphincter. The existing wounds were also reinfected and had to be reopened and drained.

On 3/1/02 during my recovery Dr. Fitzpatrick came to my room and said, "I'm sorry. I'm sorry. I should have looked up higher, should have seen it. You're in good hands with Dr. Cima."

As a result of all my treatment at the VA I've suffered a great deal of pain, medical procedures, and damages.

RS0251

**EXHIBIT B**



Hanify&King

MICHAEL R. PERRY  
617-226-3464  
mfp@hanify.com

May 17, 2004

**BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Rita S. Mandosa, Esq.  
Department of Veterans Affairs  
Office of Regional Counsel  
200 Springs Road, Bldg. 61  
Bedford, MA 01730

Re: Ronald Shamon v. U.S. Dep't of Veterans Affairs

Dear Ms. Mandosa:

By this letter, Ronald Shamon amends his claim filed on Standard Form 95 with the Department of Veterans' Affairs, Office of Regional Counsel on December 5, 2002. For ease of reference, a copy of Mr. Shamon's filing is included herewith.

In addition to the claims asserted in Mr. Shamon's December 5, 2002, filing, Patricia Shamon, the wife of claimant Ronald Shamon, hereby submits a claim for loss of consortium. As a direct result of the negligence of the doctors and medical staff of the Department of Veterans' Affairs, Patricia Shamon has lost the love, companionship, care, counsel and affection of plaintiff, Ronald Shamon. In addition, Ronald and Patricia Shamon amend the amount of their claims to \$1,000,000 resulting from the injuries they have suffered.

If there any questions concerning this amendment, please contact me.

Sincerely,



Michael R. Perry

MRP/mld  
Enclosure  
395206

Professional Corporation  
Counselors at Law

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RS0248

**EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

RONALD & PATRICIA SHAMON, )  
Plaintiff, )  
-v- ) DOCKET NO.  
UNITED STATES OF AMERICA, ) 04-11674-WGY  
Defendant. )

THE ORAL DEPOSITION OF PATRICIA SHAMON, held  
pursuant to Notice, and the applicable provisions of the  
Federal Rules of Civil Procedure, before Diana Strzemienski,  
a Court Reporter and Notary Public, within and for the  
Commonwealth of Massachusetts, at the offices of the  
United States Attorney, 1 Courthouse Way, Suite 9200,  
Boston, Massachusetts, on Wednesday, March 16, 2005,  
commencing at 10:10 a.m.

**COPY**

**APEX Reporting**  
(617) 426-3077

1 Q How long since his discharge on the 21st?

2 Did you notice any changes in his physical  
3 condition?

4 A After he was discharged? He was very weak. He  
5 couldn't walk without assistance. He couldn't get out of  
6 bed without assistance. He was distraught, to say the  
7 least.

8 He had visiting nurses twice a day to irrigate the  
9 area.

10 Q Other than the post-op visits, do you remember the  
11 next time he went to the VA?

12 A He -- I don't know.

13 They found pus in the -- wait a minute. He went  
14 to Jordan Hospital the beginning of January because he  
15 fainted in the shower. And, he was non responsive, so I  
16 called 911 because he hit his head on the faucet, and he was  
17 told that this was because he was taking a diuretic.

18 A visiting nurse was there when this occurred, and  
19 said to me, "I don't understand why he passed out. Let me  
20 see his medications." And, when I showed her the many  
21 bottles, she said, "He should not be taking this." And I'm  
22 sorry, Mr. Wilmot, I don't know the name of it.

23 Q Okay.

24 This is a VA nurse?

25 A No, no, the visiting nurse.

1 2001, what other changes in your husband's physical  
2 condition did you notice?

3 You already told me that he was weak. At times he  
4 could not walk. What other physical conditions did you  
5 notice?

6 A Well, I had set up a hospital room in one of the  
7 guest rooms, and that's where he stayed for months, and  
8 months, and months.

9 He was very fearful. I had to be--

10 Q Before you get into emotional changes, can you  
11 just tell me what physical changes you noticed after the  
12 Flex-Sig on December 7th, 2001?

13 A He couldn't sleep. He was tearful. He was  
14 completely unable to take care of himself.

15 Q Can you be more descriptive?

16 A I -- well I had to bathe him. Is this what you  
17 mean?

18 Q I'm asking what physical conditions--

19 A Well, he was unable to bathe himself. He was  
20 unable to clean himself after a bowel movement or -- and  
21 after a bowel movement he had to use a sitz bath, which had  
22 to be cleaned. He took many naps during the day.

23 Q Anything else?

24 A Not really. He was very debilitated. You don't  
25 want to know about his mental--

1 Q Not yet. I just want you to -- I want to exhaust  
2 your memory as to what physical changes you've noticed in  
3 your husband after the Flex-Sig procedure.

4 A Well, he was just very, very, weak; very sick;  
5 very -- he was--

6 Q When you say sick, what do you mean by sick? Was  
7 he vomiting?

8 A No. No.

9 Q Did he have headaches?

10 A He had -- yes, he had -- he had an appetite loss.  
11 He was just a totally different person.

12 Q Now, when did you first notice that he was  
13 suffering from headaches?

14 When did he first tell you, having headaches?

15 A I don't know. He was just -- he was so devastated  
16 by what happened to him that he, you know, he hurt.

17 Q Is he still suffering from headaches?

18 A No. No, not abnormally, no.

19 Q Do you know when the abnormal headaches, as you  
20 described it, ended?

21 A No, it was all a process of healing, as he  
22 gradually felt better.

23 Q When would you -- do you have a memory as to when  
24 he stopped complaining about headaches?

25 A No. It was one of many things following his

1 initial surgery; following his coming home.

2 He was -- he was fearful of, "What's going to  
3 happen to me?"

4 Q Again, before we get into the emotional changes  
5 you noticed, I just want to finish through the physical  
6 changes, and we will get to that.

7 You said that he could not sleep. When did you  
8 first notice that he was unable to sleep?

9 A Right away because--

10 Q I'm sorry, right away?

11 A After he came home; upon his discharge.

12 Q So, beginning on December 7th, he was unable to  
13 sleep or his discharge--

14 A 21st, yes.

15 Q So, starting on December 21st, 2001, he was having  
16 trouble sleeping?

17 A Yes.

18 Q Does he still have trouble sleeping?

19 A No.

20 Q When did his trouble sleeping end?

21 A Oh, I'd say probably after the catheter was  
22 removed; I don't remember the date. He had that probably--

23 Q You said he--

24 A --maybe into February.

25 Q Of 2002?

1           A    Yes.  He -- he didn't want to go to bed at night,  
2 and since I had to get up with him, at least twice a night  
3 for the sitz baths, I used to try to get him to go to bed  
4 because I was so tired, I wanted to go to sleep.

5           And, when I would say, "Good night," -- I mean his  
6 eyes were wide open and he'd say, "But, I can't sleep.  
7 We'll try."

8           But, he took naps during the day, and he was just  
9 so -- he was afraid to go to sleep.  He didn't want to be  
10 alone.

11          Q    You also told me he was tearful.  What do you mean  
12 by that?

13          A    That's emotional.

14          Q    That's emotional?  All right, then we'll get back  
15 to that.

16          You also said he had an appetite loss.  When did  
17 you notice this appetite loss?

18          A    Immediately.

19          Q    Immediately, starting when?

20          A    December 21st.

21          Q    Does he still have that appetite loss?

22          A    No.  I'm sorry.

23          Q    When did he get his appetite back?

24          A    I would say toward the end of the year; maybe Fall  
25 of 2002?

1           Q    Do you remember -- are any other physical changes  
2 that you remember in your husband following the Flex-Sig on  
3 December 7th, 2001?

4           A    No.

5           Q    Why don't you tell me about the emotional changes  
6 that you noticed?

7           A    He was primarily afraid to trust any doctor.  He  
8 was afraid to be alone for any time at all.

9                 If I left the house to do marketing, I would rush  
10 through it.  And the minute I walked through the door, he  
11 would be, "Where were you?  You were gone so long.  What if  
12 something had happened to me"?  He was -- he had become  
13 extremely dependent, which was a complete about face.

14                 He was very irritable, which he still is;  
15 short-tempered; attention span is short.

16                 He talks about this whole episode continuously to  
17 everybody; inappropriately I think, in many cases, to people  
18 who he hardly knows, and repetitiously.

19                 It's just devouring him.  He's very depressed.  He  
20 doesn't feel adequate.  He can't -- his strength is gone.  
21 He was unusually strong, and now he can't do things.  He has  
22 groin pain if he lifts anything very heavy.

23                 And, there are so many things.  He doesn't do lawn  
24 work; he doesn't shovel snow.

25                 I mean, this is -- if he -- we used to travel.

1 Now he can't sit very long, so if we drive anywhere, he has  
2 to keep stopping and getting out to walk around. He was  
3 told he has scar tissue which is the cause of this, and that  
4 it would always be, which makes him very despondent.

5 He doesn't have interest in doing things, whether  
6 it's -- he was in the middle of finishing the basement with  
7 his brother -- our basement -- just prior to this, and it's  
8 still sitting there. It's too much for him. Everything is.

9 He's irritable with our grandchildren, and a very  
10 short fuse. Our sex life is non-existent. I don't know.

11 Q If anything else comes to your mind, you know,  
12 just bring it up so we can just -- I just want to go through  
13 these with you.

14 A And you said that he -- you noticed that he became  
15 afraid to trust doctors. Do you remember when that began,  
16 that fear of doctors?

17 A Progressing through his treatment until he met  
18 Dr. Cima. C-I-M-A.

19 Q You say, until he met Cima. So, once he met Cima  
20 he wasn't afraid anymore or that fear dissipated?

21 A He trusted Dr. Cima, but even he really -- he's  
22 become quite paranoid, I think. And, I'm not a  
23 psychologist, so that's a lay interpretation, but I really  
24 do feel that he has become so.

25 Q You said he was afraid to be left alone. Do you

1 remember when that began?

2 A When he came home from the hospital, on the 21st.

3 Q Is he still afraid to be--

4 A No.

5 MR. WILMOT: Ms. Shamon, you have to wait for me  
6 to finish my question. That's all right.

7 THE WITNESS: I beg your pardon.

8 MR. WILMOT: It's tough. This is like a  
9 conversation.

10 THE WITNESS: I know, I know. I'm sorry.

11 BY MR. WILMOT:

12 Q So, I was just asking, is he still afraid to be  
13 left alone at home?

14 A No.

15 Q When did that fear dissipate?

16 A Gradually, I think towards the end of his  
17 recuperation, after he had subsequent surgery with Dr. Cima,  
18 and felt that he was not going to die any minute now, which,  
19 prior to that, I think was foremost in his mind.

20 Q Do you know what month that was or--

21 A No. May?

22 Q Of 2002?

23 A Yes.

24 Q You said he was extremely dependent on you. When  
25 did that begin?

1 A When he came home from the hospital.

2 Q On December 21st, '01?

3 A Yes.

4 I'm so sorry, Mr. Wilmot. I'm sorry.

5 Q On December 21st, '01 was when his dependence  
6 began?

7 A Yes.

8 Q Is he still extremely dependent on you?

9 A In many ways, yes, but he doesn't know he is.

10 Q Other than the typical ways that husbands are  
11 dependent on their wives, you described it as being  
12 extremely dependent obviously where it was a burden for you,  
13 perhaps?

14 A No.

15 Q Was that a burden?

16 A It was mentally and physically exhausting to me,  
17 but -- are you saying "burden," as in did I object to doing  
18 it, no.

19 Q Right, I'm not saying that. But, you described it  
20 to me as "extremely dependent." Those were your words. Is  
21 he still extremely dependent on you?

22 A No.

23 Q When would you say that extremely dependence  
24 ended?

25 A Toward the middle of summer, late summer of 2002

1 as he became more capable of leading a normal life, so to  
2 speak.

3 Q You say late summer? You mean July, August?

4 A August.

5 Q You said that he became very irritable, was he --  
6 prior to his being released from the hospital in December  
7 21st, 2001, was he not irritable before that?

8 A You mean in the years before?

9 Q Right.

10 A No, he was not.

11 Q So, you noticed specifically that he became  
12 irritable after this, after he was released from the VA?

13 A Correct.

14 Q Is he still irritable?

15 A Yes, sir.

16 Q With confidence.

17 In what ways?

18 A Everything. He's very short-tempered. Everything  
19 bothers him, things which I feel are not -- that's life.

20 For instance, driving, road rage personified.

21 Q And he had not exhibited these type of traits  
22 before?

23 A No, not at all.

24 Q What else? He's short-tempered even watching  
25 television, with neighbors, with interaction. Everyone is

1 annoying at some time. We all have our moments.

2 If -- I don't know -- little things around the  
3 house that are part of daily living, he can explode very  
4 easily. And he doesn't mean to and he's sorry he does it,  
5 but it happens.

6 Q You said also that he developed a short attention  
7 span. When did that begin?

8 A At the same time.

9 Q After December 21st, so on?

10 A Yes.

11 Q And he still has a short attention span?

12 A Yes.

13 Q And he did not have one beforehand, before  
14 December 21st, 2001?

15 A No. He was a fun, interesting, very gregarious --  
16 as he still is -- person but light-hearted and different.

17 Q You also said that he became depressed. When did  
18 you first notice depression in your husband?

19 A He sat -- he has a recliner in the family room,  
20 and he sat for hours on end, staring out through the sliding  
21 glass doors at the trees and the sky, meditating and feeling  
22 very sorry for himself, and thinking that he was never going  
23 to be the same man he was before.

24 Q Now what type of things was he saying to you to  
25 make you think that he -- that's how he felt?

1           A    "I can't lift anymore. I get -- I can't -- at  
2 this point, I can't even drive the car. I wonder if I ever  
3 will be able to do anything that I used to do."

4           We had an emergency trip to Tennessee in -- I  
5 think it was April of that year, which was memorable. Did  
6 you ever push a wheelchair with his size on a carpet through  
7 airports, and it just -- he was unable to live his life as  
8 he had in the past.

9           Q    And, when did you first notice that he was  
10 depressed about all these things?

11          A    I would say immediately, because he kept saying,  
12 "Why did this happen to me. Why me. What did I ever do to  
13 deserve this?"

14          "I had -- I should have gone to somebody else.  
15 Why did I have this person who hurt me, who caused all my  
16 trouble--"

17          Q    Now you said, "immediately," you mean, immediately  
18 after December 21st, '01?

19          A    Yes, when he was home, because we were home -- we  
20 were there by ourselves.

21          Q    Is he still depressed?

22          A    I would say so, yes. I mean, it's not as  
23 specifically -- well now it is because of the--

24          Q    Take your time.

25          A    Oh, because of coming here and so forth. But,

1 Q And, did your husband see anyone?

2 A No, because he thinks that's being weak.

3 Q And you also said, you noticed -- I'm sorry -- you  
4 said you noticed a loss of strength in your husband?

5 A Oh, yes. Tremendously.

6 Q And when did you first notice that?

7 A When he came home from the hospital.

8 Q On December 21st, 2001?

9 A Yes.

10 Q Does he still suffer from the loss of strength?

11 A Yes.

12 Q You said there's housework he is unable to do now?  
13 Is that correct? I believe you said--

14 A What house -- not house work as in dusting and you  
15 know--

16 Q Yard work.

17 A Right.

18 Q So, he's -- he no longer mows the lawn. Is that  
19 what you said?

20 A He mows the lawn very rarely, when it gets  
21 extremely high, and our son-in-law can't do it, and he does  
22 it in little dribs and drabs, and he's totally out of  
23 breath, and has to come in and sit down. Yeah, he does it,  
24 but not very often.

25 Q Sounds like me.

1 A And, your excuse is?

2 Q Shoveling snow.

3 A I do it.

4 Q You do it?

5 And, you've been doing it since when?

6 A 2001.

7 Q Now you were saying you do not travel, but you  
8 just said that you were in Florida?

9 A Well, we can't -- what I -- I'm sorry, we don't.  
10 We can't travel as we did before.

11 We -- if we fly, he has to sit up in front in the  
12 aisle seat. For no reason, it's just -- he's a different  
13 person psychologically. And, if we drive, I do most of the  
14 driving, and we stop very frequently so he can get out and  
15 stand up and walk around.

16 Q And, this is because he cannot sit long?

17 A Yes.

18 Q And, when did you first notice that?

19 A Immediately. He has to sit on his donut.

20 Q And, when you say, immediately, you mean  
21 immediately after he was released?

22 A Yes.

23 Q You said -- you mentioned also that he has scar  
24 tissue. When did you first hear about the scar tissue?

25 A From Dr. Cima.

1 Q When was that?

2 A I don't know when Dr. Cima saw him, Mr. Wilmot.

3 Q Okay.

4 A I'm sure it's in the chart.

5 Q Is it your belief that he still has this scar  
6 tissue?

7 A Oh, yes, he does.

8 Q You said he has a lack of interest in doing  
9 things, as well. When did you first notice that?

10 A Right away. Everything is too much effort.  
11 Everything is -- or he'll plan to do something, and then it  
12 just doesn't get done. It's not important any more.

13 Q And that began in December of 2001?

14 A Yes.

15 Q And, he still lacks this interest in doing things?

16 A Right.

17 Q Has it gotten any better?

18 A That's hard to say. If I press it, sometimes I  
19 can get him to do it. And other times, he explodes. You  
20 know, I never know how he's going to react.

21 Something that's very important to accomplish  
22 today, is sort of just forgotten about tomorrow.

23 And I don't mean to make him out as a terrible  
24 person, and that's how I'm sounding, because he can't help  
25 it. He really is a good guy.

1 Q The loss of strength. Has that gotten any better  
2 since December 21st, 2001?

3 A Well, of course. He -- I don't have to help him  
4 walk around or get in and out of bed, or so on. But, his  
5 endurance is non-existent. It's just...

6 Q I think you said also that things are too much for  
7 him, since --

8 A Well --

9 Q -- I'm sorry, you said still -- said somewhat to  
10 him not having any interest in doing things?

11 A Well, if there are obstacles, it's hard for him to  
12 stay focused. I can't think of another example at the  
13 moment.

14 Q And, when did that begin; that things overwhelmed  
15 him?

16 A Same time.

17 Q And, he still suffers from that?

18 A Yes.

19 Q Has that gotten any better?

20 A Somewhat.

21 Q I apologize for going through this last bit of  
22 questioning.

23 You said, as well, your sex life is non-existent.  
24 When did you notice that change in that aspect of your  
25 relationship?

1 A Obviously, December 7th, but--

2 Q From December 7th, forward?

3 A Correct.

4 Q And, it's still the case today?

5 A That is correct.

6 Q Has that improved at all since December 7th, 2001?

7 A Not really.

8 Q When you say non-existent, you mean, none  
9 whatsoever?

10 A No, occasionally.

11 Q When did it first start -- I'm sorry about this.

12 When did it first start back up again?

13 A In the fall of 2002.

14 Q How -- everything you described to me in terms of  
15 his -- the changes in his physical and mental condition  
16 since the Flex-Sig procedure, on December 7th, 2001, how has  
17 it affected you?

18 A I've spent a lot of time crying in private and  
19 trying not to be sorry for myself, and you know, he--

20 Why do I have to keep saying these things. I  
21 don't--

22 Q Do you want to take a moment?

23 A No. What difference does it make? You know,  
24 you're making me sound like I'm a terrible person and I hate  
25 him, and I don't mean that.

1                   MR. WILMOT: Can we go off the record for a  
2 moment?

3                   (Off the record at 11:47 a.m. to 12:02 a.m.)

4                   BY MR. WILMOT:

5                   Q     You were just describing how your husband's  
6 physical and emotional conditions have affected you, and you  
7 said there were times that you, you know, you've cried and--

8                   A     Still do.

9                   Q     Yes. Can you tell me about anything else?

10                  A     Yes. I overeat. I was very thin when this  
11 occurred, and I soothed my ruffled feelings by eating, which  
12 I never did before.

13                  And I think I'm irritable. It's -- I sort of  
14 fight back which I shouldn't.

15                  And, I don't sleep well. I really -- I'm sure  
16 that his health is okay, but I live in constant fear when he  
17 is out of the house that something is going to happen to  
18 him.

19                  Q     When you say something may happen to him. Like  
20 what?

21                  A     That he will get sick or have an accident or--

22                  Q     Does he mean fear of anything happening to him?

23                  A     Yes, because he says frequently, "With your family  
24 history, you're going to live to be a hundred and I'm not  
25 going to live long." He says it all the time, and it's --

1 you know, I don't want this to happen.

2 Q Anything else?

3 A No.

4 MR. WILMOT: I don't have any further questions.

5 But I just want to put in the record that I haven't received  
6 the documents from the Request for Production of Documents  
7 that I served or any initial disclosure documents yet. So,  
8 to the extent, when I receive your documents, if there is  
9 some issue or something that's in those documents I need to  
10 explore further with Ms. Shamon, I just want to reserve the  
11 right to recall her as a deponent.

12 MS: SUGARMAN: That's all right.

13 MR. WILMOT: That's all I have.

14 MS. SUGARMAN: I have no questions.

15 MR. WILMOT: We're all done.

16 (Whereupon, at 12:05 p.m., the proceeding was  
17 concluded.)

**EXHIBIT D**



Hanify&amp;King

**MICHAEL R. PERRY**  
 Direct Dial: 617-226-3464  
 Direct Fax: 617-305-0664  
 Email: mrp@hanify.com

RECEIVED  
 U.S. ATTORNEY  
 07 JUL -5 PM 4:06

June 30, 2005

Damian Wilmot, Esq.  
 United States Attorney  
 John Joseph Moakley United States Courthouse  
 1 Courthouse Way, Suite 9200  
 Boston, MA 02210

Re: Shamon v. United States  
U.S.D.C. 2004-11674-WGY

Dear Damian:

I write in response to your letter of June 9, 2005. Because your letter does not accurately reflect Plaintiff's position regarding the amount of Mr. Shamon's claim, I feel compelled to clarify the record on this issue.

As you know, on December 4, 2003, the Plaintiff, Ronald Shamon, filed an administrative claim form in which he alleged negligence on the part of various agents and employees of the defendant. In the section of the form entitled "Amount Claimed" Mr. Shamon indicated that he was seeking \$500,000 in damages as compensation for personal injuries that he sustained as a result of the Defendant's negligence.

On April 20, 2004, I sent a demand letter to Rita Mandosa, a staff attorney with the VA Regional Counsel's office. This demand letter related solely to Mr. Shamon's claims, and made no mention whatsoever of Mrs. Shamon's loss of consortium claim. In the final paragraph of this demand letter, I demanded \$1,000,000 in full and final settlement of Mr. Shamon's claim. Thus, as of April 20, 2004, the VA Hospital was well aware that Mr. Shamon's individual claim was being valued at \$1,000,000, not the \$500,000 amount referenced on his original claim form.

On May , 2004, I sent a second letter to Ms. Mandosa. The purpose of this letter was twofold. First, by this letter, the Plaintiff amended his administrative claim to add a loss of consortium claim on behalf of his wife, Patricia Shamon. Second the letter increased the amount of the Shamon's individual claims to \$1,000,000 each. Specifically, the letter states, in pertinent

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Hanify&King

Damian Wilmot, Esq.

June 30, 2005

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part, "In addition, Ronald and Patricia Shamon amend the amount of their claims to \$1,000,000 [each] resulting from the injuries they have suffered." By referring to the Plaintiffs claims in the plural, the letter clearly indicates that the Plaintiffs were seeking \$1,000,000 *each* for the injuries that they sustained as a result of the Defendant's negligence. This position is entirely consistent with the April 20 demand letter which valued Mr. Shamon's individual claim at \$1,000,000. At no time did the Plaintiff value Mrs. Shamon's loss of consortium claim at \$500,000.

Further, your assertion that the Defendant considered the Plaintiffs claims' to be of equal value is belied by the VA Tort Claim Information System Data Collection form produced by the Defendant during the course of discovery (See attached claim form). This claim form identifies Mr. Shamon's claim as the "Primary" claim. In light of the information contained on this form, the Defendant cannot credibly claim that it considered the amount of Mrs. Shamon's claim to be equal to that of her husband.

Moreover, in your letter you assert that the plaintiff "may recover above the amount of damages sought in the administrative claim only where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim." This is simply incorrect. While a plaintiff is barred from recovering in a civil action an amount greater than the amount claimed in his administrative claim absent "newly discovered evidence," it is expressly set forth in agency regulations that an administrative claim, including the sum certain, can be amended "by the claimant at any time prior to final agency action" so long as the initial claim was in compliance with the regulations and the amendment is submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. See 28 C.F.R. § 14.2(4)(c). See also 38 C.F.R. § 14.604(c) (same). Thus, where a plaintiff timely amends his administrative claim during its pendency and prior to final agency action to increase the sum certain, the plaintiff's recovery in a subsequent civil action is not capped by the original amount claimed and the plaintiff is entitled to recovery up to and including the amended



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Damian Wilmot, Esq.

June 30, 2005

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sum certain. See Kirby v. Marsh, 624 F. Supp. 1100, 1101-02 (M.D. Ala. 1985) (prior to final agency action, claimant amended administrative claim to increase damages sought from \$350,000 to \$1,000,000; plaintiff not precluding from recovering \$1,000,000 in civil action").

Further, when filing their administrative claim, the plaintiffs were not required to specify a separate dollar amount for their individual claims. "The purpose of Section 2675's sum certain" requirement is to facilitate settlement and to determine whether the claim exceeds \$25,000 (in which case the decision must be approved by the Attorney General...Identification of the total amount of a couple's collective damages is adequate for this purpose. None of the Fifth Circuit cases cited by the government stand for the proposition that spouses cannot submit a claim for a single lump sum. Indeed, many courts have held that a lump sum amount for multiple claimants satisfies the "sum certain" requirement. Eskine v. United States, 1995 WL 495903 (E.D.La.), Lunsford v. United States, 570 F.2d 221, 225 (8<sup>th</sup> Cir. 1977).

Please feel free to contact me with any questions that you may have regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Perry".

Michael R. Perry

MRP/pm  
432022

VA TORT CLAIM INFORMATION SYSTEM  
DATA COLLECTION FORM

PATIENT: Shamon, Ronald R.

SSN: 021-26-8139

INJURED PERSON INFORMATION

Name: Shamon, Ronald R.

Relationship to Patient: Self

Date of Birth: April 27, 1936

CLAIMANT INFORMATIONClaimantsShamon, Ronald R.  
Shamon, Patricia

(Primary)

Relationship to Injured PersonSelf  
SpouseINCIDENT INFORMATION

Date of Incident: 12/7/2001

VA MEDICAL CENTERS

Boston MA VAMC

Number 523    VISN 1    State MAVAMC SERVICES

112 Surgical

LOCATION OF INCIDENT IN VA

Operating Suite

SPECIALTY CODES

15 Gastroenterology

INJURY CODE

Surgery Related

ALLEGED NEGLIGENCE CODE:

250 Improper Performance Of Surgery

SEVERITY

2 Major

ALLEGED NEGLIGENCE DESCRIPTION

PERFORATION OF INTESTINE DURING SIGMOIDOSCOPY, FOLLOWED BY REPEATED INFECTIONS, AND MULTIPLE CORRECTIVE SURGERIES AND HOSPITALIZATIONS FROM DECEMBER 2001 THROUGH MARCH 1, 2002.

LEGAL INFORMATION

Attorneys for Plaintiff:  
 [REDACTED]  
 Bedford  
 12/4/2003  
 [REDACTED]  
 \$1,000,000.00  
 [REDACTED]

Attorneys for Defendant:  
 [REDACTED] (781) 687-3600  
 [REDACTED]  
 [REDACTED] 06/30/2004  
 [REDACTED]

Perry, Michael

Tort Status  
 06/30/2004 02 Claim Denied by Regional Counsel  
 12/04/2003 00 Administrative Tort Claim Pending

REMARKS